

**UNITED STATES DISTRICT COURT**

**DISTRICT OF NEVADA**

FRANK S. D'AGOSTINO,

Plaintiff,

vs.

LISA WALSH et al.,

Defendants.

3:12-cv-00065-RCJ-WGC

**ORDER**

Plaintiff Frank S. D'Agostino is a prisoner in the custody of the Nevada Department of Corrections. He filed the present civil rights Complaint in this Court, and the Court permitted two claims to proceed upon screening. Defendants later moved to dismiss those claims for failure to exhaust administrative remedies. The magistrate judge recommended granting the motion and dismissing without prejudice, and the Court adopted the recommendation. Plaintiff has asked the Court to reconsider. Specifically, he asks the Court to reopen the case and stay it while he exhausts his administrative remedies or allow him to refile the case under the same case number upon exhaustion. The Court denies the motion. Plaintiff may file a new case if and when he exhausts his administrative remedies. The state statute providing for a stay under similar circumstances is manifestly a procedural rule that does not control in federal court.

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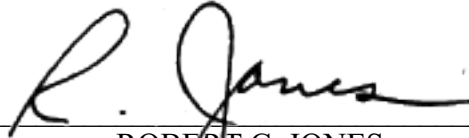
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**CONCLUSION**

IT IS HEREBY ORDERED that the Motion to Reconsider (ECF No. 49) is DENIED.

IT IS SO ORDERED.

Dated this 10<sup>th</sup> day of January, 2014.



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ROBERT C. JONES  
United States District Judge